

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

ALL CASES

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**REQUEST FOR ARGUMENT REGARDING
PLAINTIFFS' MOTION FOR MODIFICATION OF CMO-1**

Defendants respectfully file this request for oral argument regarding Plaintiffs' motion for modification of Case Management Order One (Dkt. 232).¹ In their response to Plaintiffs' motion, Defendants explained the extraordinary relief sought by Plaintiffs and detailed Plaintiffs' failure to identify any authority that would permit this Court to grant the relief they request. Plaintiffs' reply fails to cure these deficiencies.

This Court should deny the motion based on the papers, but to the extent that the Court is considering granting relief beyond extension of the amendment deadline, Defendants respectfully request the opportunity to present argument to address the positions taken in Plaintiffs' reply, particularly Plaintiffs' contentions regarding *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538 (2010).

Plaintiffs contend that *Krupski* overturned the Sixth Circuit's precedent and now permits amendments to relate back when the plaintiff did not know whom to sue. *See* Reply at 4 ("[I]f Plaintiffs did not originally sue a potential defendant, it is because they are unaware of them and

¹ This opposition is submitted on behalf of all manufacturer, distributor, and chain pharmacy defendants that have appeared in any case in this MDL proceeding to date.

the role they played[.]”). But the Sixth Circuit has rejected precisely this reading of *Krupski*: “Even after *Krupski*, Rule 15(c) offers no remedy for this problem [of not knowing whom to sue].” *Smith v. City of Akron*, 476 F. App’x 67, 69 (6th Cir. 2012).

This Court should deny Plaintiffs’ motion for modification of Case Management Order One (at least to the extent that it requests relief beyond extension of the amendment deadline) or, in the alternative, hold argument or permit Defendants to file a sur-reply.

Date: June 18, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, this 19th day of June, 2018, I electronically filed a copy of the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

/s/ Kaspar Stoffelmayr
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